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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/470,554	12/22/1999	DANIEL I. KERPELMAN	GEMS:0066/15	6296

7590

04/14/2003

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EXAMINER

MORGAN, ROBERT W

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/470,554

Applicant(s)

KERPELMAN ET AL.

Examiner

Robert W. Morgan

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.


NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 1-32.Claim(s) withdrawn from consideration: NONE.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Advisory Action

In the remark, Applicant argues in substance that, (1) a “service request” is not equivalent to a “request for an image file”; and (2) a “data communications control system” is not equivalent to the “communication controller” of Ballantyne et al.

In response to Applicants argument that, (1) a “service request” is not equivalent to a “request for an image file”. It is noted that Applicant relies on a passage from the specification, page 3, line 25 to page 4, line 2, and page 8, lines 10-24, to impart a specific meaning to claim language, namely “service data request”. However, the Examiner respectfully notes that the cited passage relied upon by Applicant is replete with non-committal terms, in particular “The data requests, in a general sense, may include...” and “Service system 62 may also be ...”. It is respectfully submitted that such language appears to describe an invention in terms of what the invention may (or may not) be, rather than what it actually IS. Thus, Applicant’s relied upon passage fails to positively and definitely require the specific meaning, which Applicant now argues.

In response to Applicants argument that, (2) a “data communications control system” is not equivalent to the “communication controller” of Ballantyne et al. Again it is noted that Applicant relies on a passage from the specification, page 7, lines 13-17, page 10, line 1 to page 11, line 12 and page 11, lines 14-26, to impart a specific meaning to claim language, namely “data communication control system or DCCS”. However, the Examiner respectfully notes that the cited passage relied upon by Applicant is replete with non-committal terms, in particular “...service or data providers, which may permit the DCCS 40 to optimize...”, “The DCCS 40 may also include...” and “additional applications or software routines may preferably be included in the DCCS 40, which may

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include diagnostic...". It is respectfully submitted that such language appears to describe an invention in terms of what the invention may (or may not) be, rather than what it actually IS. Thus, Applicant's reliance upon passage fails to positively and definitely require the specific meaning, which Applicant now argues.

Applicant's other arguments merely rehash issues addressed in the Final Rejection mailed 1/23/03 in paper number 8, and incorporated herein. Thus, the finality of the previous Office Action is maintained.